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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/759,751

01/16/2004

Ray T. Flugger

A-72192/RBC/VEJ

8351

32940

7590

04/18/2005

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EXAMINER

SAN MARTIN, EDGARDO

ART UNIT

PAPER NUMBER

2837

DATE MAILED: 04/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/759,751

Applicant(s)

FLUGGER, RAY T.

Examiner

Edgardo San Martin

Art Unit

2837

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 6/28/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 7, 11 and 12 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. With respect to claim 7, claim 1 already established a muffler comprising an end wall; with respect to claim 11, claim 8 already established a method of forming an end cap; and With respect to claim 12, claim 8 already established a muffler comprising an end cap. Since, claim 1 and 8 are the parent claims of claims 2 – 7 and 9 – 12, respectively, the Examiner considers that claims 7, 11 and 12 fail to further limit the subject matter of the parent claim.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which the subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 – 17 are rejected under 35 U.S.C. 102(b) as anticipated by White (US 6,470,998) or, in the alternative, under 35 U.S.C. 103(a) as obvious over White (US 6,470,998) in view of Douglas et al. (US 5,290,974).

With respect to claims 1, 7, 8 and 13, White teaches an apparatus and method of forming it, describing an end cap for an internal combustion engine muffler having a muffler casing defining a muffler chamber (Fig.1, Item 12), the end cap (Fig.1, Items 20 and 21) comprising an end wall having an aperture; a mounting structure (Fig.5, Item 27) dimensioned and configured for securing the end wall to an end of the muffler casing; and a tubular member (Fig.6, Item 23) extending from the end wall adjacent to and surrounding the aperture, the tubular member and the aperture defining an inlet/outlet port for the muffler chamber; wherein the end wall, the mounting structure and the tubular member are monolithically formed with the end wall (Figs.1, 5 and 6; Col.4, Line 50 – Col.5, Line 19). The Examiner considers that White inherently teaches wherein the mounting structure and the tubular member are monolithically formed with the end wall based on the language used on Col.4, Lines 56 – 58.

Nevertheless, in an alternative, Douglas et al. teaches wherein a mounting structure and a tubular member (Fig.4, Item 46) are monolithically formed with an end wall (Fig.4, item 44) of a muffler (Col.5, Lines 22 – 30).

It would have been obvious to a person with ordinary skill in the art at the time of the invention was made to employ the Douglas et al. monolithic end wall configuration with the White design because the monolithic configuration would provide a quicker

process of manufacturing the muffler and muffler parts, economizing time and cost, increasing the efficiency of the manufacturing process.

With respect to claims 2 and 3, White teaches wherein the end wall includes a peripheral shoulder extending along at least a portion of a periphery of the end wall; and wherein the peripheral shoulder defines an stepped land and a substantially flat outer surface (Figs.13 and 14; Col.5, Lines 20 - 28).

With respect to claims 4 – 6, 16 and 17, the Examiner considers that White teaches the limitations described in the claims (Figs. 5, 6, 9 and 10).

With respect to claims 9 - 12, the Examiners takes official notice that it is well known in the art of metal working to employ the processes of stamping and deep drawing to give a desired shape to a metal material.

With respect to claim 13, White teaches a forward end cap and a rearward end cap (Fig.1, Items 20 and 21).

With respect to claim 14, White teaches wherein the casing includes an oblong tubular member defining the muffler chamber (Figs. 1 and 3).

With respect to claim 15, White teaches wherein the forward mounting structure includes a forward mounting flange extending around a periphery of the forward end wall welded to the forward end of the casing, and the rearward mounting structure includes a rearward mounting flange extending around a periphery of the rearward end and welded to the rearward end of the casing (Col.5, Lines 10 – 15).

***Conclusion***

3. The attached hereto PTO Form 892 lists prior art made of record that the Examiner considered it pertinent to applicant's disclosure.

***Contact Information***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edgardo San Martin whose telephone number is (571) 272-2074. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Martin can be reached on (571) 272-2107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Edgardo San Martín  
Primary Examiner  
Art Unit 2837  
Class 181  
April 13, 2005